

## USEPA COMMENTS ON NEW YORK CITY DEP'S "GOWANUS CANAL CSO TANK SITING" MEMO

**USEPA Comment:** There are several critical omissions and unrealistic assumptions that were utilized in assigning the weighing factors to the ranking elements listed in Attachment A, which ranks potential sites for the location of the retention tanks in the vicinity of tank location RH-34 as specified in EPA's Record of Decision.

For example, the "Land Use and Environmental" criterion for "Known contamination/hazardous materials" has been given a weighting factor of 15. The description of the scaling factors does not include the assumption that the site will be remediated by others, namely National Grid, if excavation for the construction of a retention tank takes place and, therefore, would not be the responsibility of New York City.

**NYCDEP Response:** Regardless of which party pays for the cost of handling the contaminated soil and groundwater associated with construction of the CSO facility, the remedial work is an integral part of the overall project and must be considered. The nature and extent of contamination at the site will directly affect the site investigation activities and their duration, methods for remediation, construction long-term monitoring and environmental, health and safety considerations for the project and surrounding community. This category has appropriately been assigned a moderate weighting factor relative to the other categories to account for known site characteristics and to avoid introducing bias into the analysis. Further, although EPA assumes that these costs will be borne by National Grid, a position the City concurs with, there is no legally binding document assigning those costs to National Grid. Thus, the City cannot discount the possibility that it will be required to bear some or all of the costs of site remediation and preparation required for construction of the CSO facility.

Further evaluation of the impact of contamination on the cost of the project is included in the CSO Facility Site Recommendation Report for Red Hook Outfall RH-034 that the City submitted to EPA on June 30, 2015. Conceptual designs were developed for both short-listed sites (RH-3 and RH-4) and AACEI Class 4 cost estimates were developed with consideration of all project factors, only one of which was the presence of contamination. The text describing the detailed analyses based on the conceptual designs and cost estimates can be found in Sections 5 and 6 of the referenced Site Recommendation Report, and the detailed 3-Level Cost Estimate is included in Appendix A of the document. In response to an EPA request for additional information, the City submitted the more detailed 6-Level Cost Estimate, including unit prices, on October 5, 2015.

**USEPA Comment:** In addition, tank locations RH-3 and RH-4 have been given different ratings, although both of the sites are known to have significant contamination and RH-4 is also known to have large underground structures that will have to be removed.

**NYCDEP Response:** RH-3 and RH-4 have been given different rankings for this criterion because RH-4 was part of the active MGP operations and still contains underground structures left in place during demolition of the MGP, as EPA has explicitly noted. While the ranking of RH-3 does take into account the significant nature of its soil and groundwater contamination, that site was not part of the active MGP operations, does not have known underground structures, and was impacted primarily by contaminant migration from the former Fulton MGP operations (Final Remedial Investigation Report, Fulton Municipal Works Former Manufactured Gas Plant Site, GEI, July 2012). By contrast, RH-4 was the location of some of the primary Fulton MGP operations and contains the source area for the MGP

contamination, which will introduce additional complications surrounding the handling and disposal of contaminated soil and groundwater. RH-4 also will require significant additional effort to remove the underground structures, and was therefore given the different rating for this criterion. Nevertheless, both sites received comparable low ratings for this criterion due to the presence of contamination.

**USEPA Comment:** In addition, as mentioned above, these locations will not be remediated by NYC. Therefore, the ratings for this criterion should be at least the same and they should have a much higher rating than the one assigned because NYC would not be responsible for their remediation. This ranking criterion should be redefined and the scaling factor should be applied properly taking into account the above considerations.

**NYCDEP Response:** We agree that it is not the responsibility of the City to remediate contamination created by other parties. However, irrespective of which party ultimately bears responsibility for the cost of handling and/or removing contaminated soil and groundwater, the effort and costs are nevertheless a part of the overall project.

We disagree that the ratings for this criterion should be the same for sites RH-3 and RH-4. As set forth above, sound bases exist to differentiate the sites. Accordingly, we believe the ranking or weighting factor for this criterion is appropriate.

**USEPA Comment:** Another criterion that is improperly assessed is the “Land Use and Environmental” criterion for “Property Acquisition.” This criterion is given a weighting factor of only 10%, which is much less than the 30% weighting factor assigned to the “proximity to existing infrastructure” criterion and two other criteria. NYC’s ability to build on property that it already owns, so that it does not have to acquire property that currently is at a premium in the Gowanus area, should have a much higher weighting factor than the one assigned. In our estimate, the weighing factor for this criterion should be at least 20%, if not 30%.

**NYCDEP Response:** The City does not agree with EPA’s position on the relative weighting of property acquisition and proximity to infrastructure criteria. Decisions regarding the application of weighting factors must be informed by experience and understanding of the overall requirements and complexities associated with constructing and operating CSO facilities. Property acquisition is but one factor. When considering the overall effort and resources required to construct and to integrate a new facility into the City’s operations and infrastructure, property acquisition constitutes approximately only 15% of the overall cost of the facility. By contrast, proximity to existing infrastructure has broad implications that affect the entire project, both during construction as well as operations of the facility. As discussed in detail in the CSO Facility Site Recommendation Report for Red Hook Outfall RH-034, submitted to EPA on June 30, 2015, that site, together with the new force main, would require longer and more complex conveyance, would present performance challenges resulting in adverse impacts to the community, and would require complex utility crossings or relocations, deeper excavation for the tanks and piping to maintain proper hydraulic performance, extensive disruption and possible closure of narrow City streets, and more widespread disruption of the community during construction.

In any event, property acquisition criteria was added to the scoring in response to EPA’s prior request to account for the City’s current ownership of the park property at RH-4. To fully integrate this distinction into the scores, the RH-4 property was assigned a ranking of 100--the highest possible score for that criterion. To account for the need to purchase the two parcels at RH-3, that site was assigned a ranking

of zero--the lowest possible score--to provide the maximum differentiation between the sites. This scoring methodology effectively compounds the weighting of that criterion.

On October 1, 2015, the City presented to EPA a plan to address the risk of delays caused by property acquisition. The City has also completed a market analysis to estimate the cost of the two parcels and is already taking steps to acquire the properties and to manage schedule and cost risks. Furthermore, the City maintains that there are very real risks of significant project delays which could result from a parkland alienation process or legal challenges to selection of the park site. In addition, selection of the park site will necessitate the identification and acquisition of a temporary park location, construction of a temporary park before demolition of the existing Thomas Greene Park, as well as requiring post-construction park restoration. DEP believes the project duration and schedule risks associated with the park site are far greater than the more compressed schedule associated with the comparatively standard acquisition of the RH-3 properties through negotiation or condemnation.

**USEPA Comment:** A weighing of 30% would be in line with the NYCDEP Commissioner's statement at the 2014 Wyckoff Gardens public meeting that cost would be very important in considering the tank locations. It would also take into account the rapidly increasing costs for land acquisition in the area and the loss of tax revenue in perpetuity for at least two parcels that comprise tank location RH-3, the sum of which would be presumably much higher than the additional construction and operational costs that might be associated with tank location RH-4. NYC should also assume that any costs associated with the temporary relocation of the pool and services and their eventual restoration in tank location RH-4 would be at least shared with other parties.

**NYCDEP Response:** Since the 2014 Wyckoff Gardens public meeting, the City's perspective on cost as a key factor in recommending a site has developed as additional information has become available. The City's recommendation to construct the facility at the RH-3 site is driven by the goal to minimize delay, risk and community impacts and to provide the highest level of facility performance. Continued development of conceptual designs, specifically evaluation of feasible influent alignment options to the RH-4 site, has revealed significant challenges to providing equivalent CSO event reduction while avoiding increased surface flooding when compared to the RH-3 site. The City also considers permanent loss of parkland and project delays while temporary park facilities are sited and constructed to be detrimental to the community and the overall remediation schedule.

Also, as described above, property acquisition is but one cost factor, representing only about 15% of the overall project cost. To assign the 30% weighting that EPA suggests would ignore 85% of the project cost would be inappropriate, would introduce an unsupported bias into the analysis, and would be contrary to the Commissioner's referenced statement.

The assertion that the cost for property acquisition at Site RH-3 would be much higher than the additional cost to construct the facility at RH-4 is incorrect. The cost to acquire the two parcels that comprise Site RH-3 has been taken into account in the conceptual design and cost estimates for the project and is far less than the total cost provide a temporary park and replace the existing pool and park post-construction. The City undertook extensive research on real estate sales trends. That research and analysis is presented in Appendix D of the CSO Facility Site Recommendation Report for Red Hook Outfall RH-034, submitted to EPA on June 30, 2015. The actual data that the City provided does not support EPA's assertion.

Regardless of how potential future cost-sharing for park temporary relocation, restoration, and potential alienation might be allocated, it is nevertheless an intrinsic part of the overall project cost and must be included in a complete and objective site-selection analysis. Because of the difficulty of assessing both the dollar value and schedule impacts associated with the risks inherent in utilizing the park site, this component was intentionally excluded from the analysis of the RH-4 site. Again, this approach is intended to avoid introducing bias against that site, but may result in an inadequate representation of the cost and schedule impacts associated with parkland alienation and mitigation (see Appendix A of the June 30, 2015 Site Recommendation Report). The City's position on this matter was presented to EPA at the meeting on October 1, 2015.

**USEPA Comment:** For similar reasons, unless the costs associated with the "Proximity to Existing Infrastructure" criterion (*i.e.*, the approximate costs of additional conveyance pipes) are comparable with the "Property Acquisition" costs, which is unlikely, as acquisition costs are in the tens of millions of dollars, the weighting factor assigned to the "Proximity to Existing Infrastructure" criterion should be reduced.

Please revise the rankings taking into account the above considerations.

**NYCDEP Response:** As detailed above, DEP disagrees with EPA's assumptions regarding cost factors on the project; additional conveyance piping is only one cost associated with a more distant site. For all the reasons above, the City does not believe it is appropriate to revise the site rankings or weighting factors as they are presented in the Gowanus Canal CSO Tank Siting Short List technical memorandum. We encourage EPA to review the detailed information regarding conceptual designs and cost estimates presented in the June 30, 2015 CSO Facility Site Recommendation Report for the Red Hook Outfall RH-034 and to join us for a workshop at which we can jointly review the project requirements, conceptual designs, and cost estimates in detail. It is our belief that such a workshop would enhance EPA's understanding of the project requirements.